CLECs are able to connect their networks to SWBT's by the most efficient means possible, including placement of the CLEC's own equipment in SWBT buildings.

To carry traffic between SWBT and CLEC locations, SWBT has provisioned more than 103,700 interconnection trunks in Missouri. See Tebeau Aff. Attach. A. To ensure nondiscrimination, SWBT provisions these trunks using the same equipment, interfaces, technical criteria, and service standards that are used for SWBT's own retail trunks. See Deere Aff. ¶ 31 (App. A, Tab 5); Texas Order, 15 FCC Rcd at 18380, ¶ 62; Kansas/Oklahoma Order ¶ 224. As in Texas, Kansas, and Oklahoma, and as further discussed below, these and other steps to facilitate interconnection between SWBT and CLECs fully satisfy the requirements of Checklist Item 1. See Texas Order, 15 FCC Rcd at 18380, ¶ 65; Kansas/Oklahoma Order ¶ 223.

The M2A, along with SWBT's interconnection agreements with other carriers, establishes five standard methods by which CLECs may connect their networks to SWBT's: mid-span fiber interconnection, physical collocation, virtual collocation, synchronous optical network-based ("SONET") interconnection, and leasing of SWBT facilities. See Deere Aff. ¶ 14. Each of these interconnection arrangements is available at the trunk side or line side of the local switch, the trunk connection points of a tandem switch, central office cross-connect points, out-of-band signaling transfer points, and points of access to UNEs. Id. ¶¶ 20, 24. For the purposes of interconnection to exchange local traffic, a CLEC may choose a single, technically feasible point of interconnection within a local exchange, a Metropolitan Calling Area ("MCA"), or a LATA. See id. ¶ 65; Texas Order, 15 FCC Rcd at 18390, ¶ 78; Kansas/Oklahoma Order ¶ 232. Specifically, the M2A contains terms and conditions for a single point of interconnection in a local exchange and an MCA, as well as a binding legal obligation to provide a single point of interconnection within a LATA. See Deere Aff. ¶ 65. The Missouri PSC is currently

reviewing the appropriate terms and conditions for interconnection at a single point in the LATA in Case No. TO-2001-455. See Sparks Aff. ¶ 32 (App. A, Tab 11). SWBT will provide other technically feasible alternatives through a Special Request Procedure. See Deere Aff. ¶¶ 14, 84-88.

1. Interconnection Trunking

Mid-span fiber interconnection ("MSFI") is available at any mutually agreeable, economically, and technically feasible point between a CLEC's premises and a SWBT tandem or end office. Id. ¶ 15. The MSFI arrangement may be used to provide interoffice trunking for originating and terminating calls between the two networks or for transit of calls to or from a third party via SWBT's tandem switch. Id. ¶ 16; see also id. ¶¶ 17-19.

The Affidavit of William C. Deere discusses interconnection interoffice trunking arrangements from a CLEC to SWBT (for traffic originated by the CLEC), and from SWBT to a CLEC (for traffic terminated over the CLEC's network). Id. ¶¶ 35-41. Forecasting and servicing of interconnection trunk groups are based upon the same industry-standard objectives that SWBT uses for its own trunk groups. Id. ¶¶ 42-62. SWBT also uses standard trunk traffic engineering methods to ensure that interconnection trunking is managed in the same manner as trunking for SWBT's own local services. Id. ¶ 49. In order to ensure equality, SWBT interconnects with CLECs using the same facilities, interfaces, technical criteria, and service standards as SWBT uses for its own retail operations. Id. ¶ 31.

SWBT has implemented, as part of its Performance Measurement Plan, multiple separate measures relating to interconnection trunking. See Dysart Aff. Attach. C at 119-31 (App. A, Tab 18). Relevant measures track trunk blockage (PMs 70, 71), missed due dates (PM 73), the length of delays for missed due dates (PM 74), and trunk restoration intervals (PMs 76, 77). Id.

These are the very same "clearly defined performance measurements and standards" developed in Texas. Texas Order, 15 FCC Rcd at 18357, ¶ 3; Kansas/Oklahoma Order ¶ 3.

In Texas, Kansas, and Oklahoma, this Commission based its approval of SWBT's interconnection trunking performance largely on the finding that, in the three months preceding its application, SWBT met the relevant benchmarks under PM 70 for trunk blockage (i.e., blockage not to exceed one percent) and PM 73 (missed due dates for installation of interconnection trunks). Texas Order, 15 FCC Rcd at 18382-86, ¶¶ 67-70; Kansas/Oklahoma Order ¶¶ 225-227. The same is true in Missouri. See Dysart Aff. Attach. E. For SWBT end office to CLEC end office (PM 70-01), SWBT's statewide data indicate 0.0 percent trunk blockage for the three-month period between December 2000 and February 2001. Id. (PM 70-01). And for SWBT tandem to CLEC end office (PM 70-02), SWBT's statewide data indicate an average of 0.67 percent trunk blockage over the past three months. Id. (PM 70-02). Indeed, for the past 12 months ending February 2001, blockage was virtually 0.0 percent for PM 70-01 and well under the benchmark for PM 70-02. Id. ¶ 39 & Attach. B.[19] Under revised PM 73-01 (Percentage of Installations Completed Within the Customer-Requested Due Date), SWBT timely installed 100 percent of trunks ordered by CLECs in January 2001 (totaling 1,535), and 93.2 percent of the trunks were installed on time in February (5,552 out of 5,960) – the first two months that this new measure was used. See Dysart Aff. Attach. B (PM 73-01); see also id. ¶ 40. Under the previous version of PM 73, SWBT achieved parity in 11 out of 12 months in 2000. Id. ¶ 41 & Attach. S; see also Final Missouri PSC Order at 23 (concluding, based on analysis of

[19] SWBT met the benchmark for PM 71-01 (common trunk blockage) in ten of the past 12 months. See Dysart Aff. ¶ 39 & Attach. E.

performance data under PMs 70 and 73, that SWBT "has provided Missouri CLECs a meaningful opportunity to compete").

2. Collocation

CLECs in Missouri may use collocation for interconnection, to combine UNEs obtained from SWBT with other network facilities, and to provide exchange access or interexchange access. See Sparks Aff. ¶¶ 6, 33; Deere Aff. ¶¶ 26, 29. In fact, SWBT has provided CLECs 681 physical and 13 virtual collocation spaces in 94 different SWBT central offices in Missouri. See Tebeau Aff. Attach. A (data through February 2001).

SWBT has filed state physical and virtual collocation tariffs in Missouri. Pending their review, the Missouri PSC adopted on an interim basis the terms and conditions for collocation in Kansas, which this Commission approved in the Kansas/Oklahoma Order (¶ 228). See Sparks Aff. ¶ 33. SWBT accordingly incorporated the Kansas physical and virtual collocation terms and conditions into the M2A as interim appendices. Id. Similarly, the Missouri PSC adopted the Texas collocation rates on an interim basis, subject to true-up. See Final Missouri PSC Order at 27-28 ("In order to move competition forward, the Commission finds that until permanent collocation prices are set in Missouri by a final decision in Case No. TT-2001-298, it is appropriate to use the Texas prices subject to a limited true-up period."). SWBT also provides both physical and virtual collocation pursuant to its Commission-approved interstate tariff, FCC No. 73. See Sparks Aff. ¶ 33. Because SWBT's terms and conditions for collocation will be provided via tariff, they are legally binding and cannot be changed without review by the Missouri PSC or by this Commission. Id. ¶ 35.

The following discussion of the collocation terms and conditions is based on the interim M2A appendices adopted by the Missouri PSC, the relevant provisions of which are cited in the

supporting affidavits. As also discussed below, SWBT's collocation offerings fully comply with the requirements of the Collocation & Advanced Services Reconsideration Order,[20] which took effect October 10, 2000. On that date, SWBT provided Accessible Letter CLEC00-203 (App. F, Tab 35) to Missouri CLECs, which outlines the minimal changes in SWBT's procedures necessary for compliance with that order. See Sparks Aff. ¶ 80.

Physical collocation of CLEC equipment is available wherever space permits. See Sparks Aff. ¶¶ 47-57; Deere Aff. ¶¶ 22-23. SWBT allows collocation of telecommunications equipment for the purpose of transmitting and routing telephone exchange or exchange access service, or to obtain access to UNEs. See Sparks Aff. ¶ 48; Deere Aff. ¶ 26.

SWBT makes available caged, shared cage, cageless, and physical collocation arrangements, all at the option of the CLEC. See Sparks Aff. ¶¶ 47, 51-55. Adjacent space collocation is available when all space for physical collocation is legitimately exhausted. Id. ¶ 56. If space in an Eligible Structure subsequently becomes available, the CLEC may, at its option, relocate its equipment into that interior space. Id. ¶ 78; see 47 C.F.R. § 51.323(k)(3) (as revised by the Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17830, ¶ 46). SWBT also will make available other technically feasible collocation arrangements. See Sparks Aff. ¶ 58.

Detailed terms for collocation are provided in Technical Publication TP 76300MP, Installation Requirements, which is incorporated by reference in the M2A interim Physical Collocation Appendix. Id. ¶ 49. CLECs obtaining physical collocation also receive access via

[20] Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 15 FCC Rcd 17806 (2000).

the CLEC Online website to SWBT's Interconnector's Collocation Services Handbook for Physical Collocation. Id.

If SWBT must deny a CLEC's request for physical collocation because space is not available, SWBT will furnish detailed documentation of this denial to the CLEC within ten days. Id. ¶ 59. After reviewing SWBT's documentation and touring the structure, the CLEC may initiate an independent third-party review of space availability, with ultimate review and approval by the state commission, if necessary. Id. ¶ 60. As explained in the Affidavit of William C. Deere, SWBT maintains a publicly available document on the Internet indicating when physical collocation space is no longer available in its central offices, pursuant to 47 C.F.R. § 51.321(h). See Deere Aff. ¶ 22. See generally Sparks Aff. ¶ 61 & Attach. A. Standards for space reservation are nondiscriminatory. See Sparks Aff. ¶ 63. As required by the Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17834, ¶ 53 (revising 47 C.F.R. § 51.323(f)), these space reservation policies apply as well to affiliates of SWBT. See Sparks Aff. ¶ 77. SWBT has adopted a number of policies that conserve collocation space and maximize opportunities for carriers to enter or to expand their presence in the local market, including removal of obsolete, unused equipment upon reasonable request by a collocator or upon order of the state commission. Id. ¶ 64. SWBT also conserves caged collocation space by allowing CLECs to purchase space in increments as small as the amount of space needed to house and maintain one rack or bay of equipment, or even smaller. Id. ¶ 51.

Security measures for collocators in SWBT's central offices reasonably protect SWBT's network and equipment from harm, and are no more stringent than those followed by SWBT's own personnel. Id. ¶ 65. CLEC personnel need not undergo any security training more stringent or intensive than the training undergone by SWBT personnel, nor are they required to obtain

training from SWBT. Id. ¶ 66. Consistent with the Collocation & Advanced Services Order,[21] SWBT may recover the costs of erecting an interior security partition to separate SWBT's own equipment in lieu of the costs of other reasonable security measures. See Sparks Aff. ¶ 67. Such a security partition will not interfere with a CLEC's access to its own equipment, and will not be the basis for a claim that collocation space is exhausted. Id. ¶ 68. CLECs have access to their collocated equipment 24 hours a day, seven days a week, without a security escort, as well as access to restrooms and parking. Id. ¶ 69. CLECs also have reasonable access to their chosen collocation space during construction. Id. ¶¶ 43, 75; see Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17835-36, ¶ 59 (revising 47 C.F.R. § 51.321(f)). SWBT does not use information obtained from CLECs in the course of implementing security arrangements for marketing or other competitive purposes. See Sparks Aff. ¶ 65. SWBT requires CLECs' equipment to satisfy the Bellcore Network Equipment and Building Specifications ("NEBS") Level 1 safety standards but does not refuse collocation of equipment that fails to meet NEBS reliability standards. Id. ¶ 70; see Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17834-35, ¶ 55. SWBT also has modified its internal procedures to ensure that, if it denies collocation on the ground that a CLEC's equipment fails to meet applicable safety standards, the Commission-required affidavit contains all information required by the Collocation and Advanced Services Reconsideration Order, 15 FCC Rcd at 17835, ¶ 57 (revising 47 C.F.R. § 51.323(b)). See Sparks Aff. ¶ 76.

[21] First Report and Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 4761, 4784-85, ¶ 42, 4788, ¶ 48 (1999), vacated in part, GTE Serv. Corp. v. FCC, 205 F.3d 416 (D.C. Cir. 2000).

SWBT provisions collocation space in conformance with Commission requirements. Although the Collocation & Advanced Services Reconsideration Order established default national intervals for physical collocation effective October 10, 2000, those intervals apply only "in the absence of state standards." 15 FCC Rcd at 17818, ¶ 21; see 47 C.F.R. § 51.323(l).[22] Because the Missouri PSC has already established its own collocation application and provisioning intervals, SWBT is currently in compliance with the new regulation. See Sparks Aff. ¶ 79; see also id. ¶ 33 (explaining that the Missouri PSC has adopted the Kansas terms and conditions with Texas rates, which have been approved by this Commission, on an interim basis while it considers SWBT's proposed Missouri Physical Collocation Tariff). SWBT responds to each request within ten days with a notification of whether space is available, and (if so) a price quotation, except where a CLEC places a large number of collocation orders in the same five-business-day period. Id. ¶¶ 36-40.

Construction intervals likewise are short. In central office space with existing collocation infrastructure, for example, SWBT completes construction of caged physical collocation space within 90 days. Id. ¶ 41. For inactive space, the interval is 140 days. Id. SWBT completes cageless collocation within 55 days if the collocator provides its own bays, and within 70 days if the collocator does not. Id. ¶ 42. These application and provisioning intervals allow Missouri CLECs to obtain collocation in a timely manner and are identical to those approved in Kansas. See id. ¶¶ 36-42.

[22] The Commission's default standards require the incumbent LEC to give notification of its acceptance or denial of a CLEC's error-free application for collocation within ten calendar days of its receipt, and to provision the space within 90 calendar days of its receipt. See Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17820-22, ¶¶ 24-27. The Commission did not set provisioning intervals for virtual collocation. Id. at 17824, ¶ 32.

The available performance data from December 2000 through February 2001 show that SWBT processed CLECs' requests for collocation within the applicable interval 100 percent of the time. Dysart Aff. Attach E (PM 109); see also id. ¶ 44. As further evidence of SWBT's excellent collocation performance, SWBT completed 392 collocation projects in the last 12 months ending February 2000 without a single missed due date. Id. ¶ 44 & Attach. B (PM 107).

Virtual collocation is available to CLECs regardless of the availability of physical collocation. See Sparks Aff. ¶ 71; Deere Aff. ¶ 24. SWBT uses the same engineering practices for virtually collocated equipment as it does for its own similar equipment. See Sparks Aff. ¶ 72. Although not required by law,[23] CLECs have the option in some circumstances to maintain and repair their own virtually collocated equipment. Sparks Aff. ¶ 73; Deere Aff. ¶ 24.

SONET-based interconnection is similar to the virtual collocation arrangement, except that both the CLEC and SWBT install SONET-based equipment in their respective locations and each can select the SONET equipment vendor of its choice. See Deere Aff. ¶ 27. All of the same options for service configurations exist for this arrangement as with virtual collocation interconnection. Id.

Special Request Process. In addition to these standard offerings, CLECs may request custom-tailored interconnection arrangements through a Special Request process. Id. ¶¶ 14, 84-88; Sparks Aff. ¶ 58. This process, which is also known as the "Bona Fide Request" process, allows CLECs to request modifications to existing interconnection arrangements as well as

[23] See Collocation & Advanced Services Reconsideration Order, 15 FCC Rcd at 17812, ¶ 9 ("In a virtual collocation arrangement, the competitor designates the equipment to be placed at the incumbent LEC's premises. The competing provider, however, does not have physical access to the incumbent's premises. Instead, the equipment is under the physical control of the incumbent LEC, and the incumbent is responsible for installing, maintaining, and repairing equipment designated by the competing provider.").

additional arrangements. See M2A Attach. 6 – UNE, § 2.22. SWBT will analyze the technical feasibility of the request and prepare a preliminary report for the requesting carrier within 30 days. See Deere Aff. ¶ 8; M2A Attach. 6 – UNE, § 2.22.5. If the request is technically feasible and the CLEC authorizes further development, SWBT will negotiate a schedule for arriving at price and implementation terms (which generally will not extend beyond 90 days from SWBT's receipt of the request). See Deere Aff. ¶ 87; M2A Attach. 6 – UNE, § 2.22.6. The CLEC may arbitrate feasibility issues before the Missouri PSC. M2A Attach. 6 – UNE, § 2.22.10.

3. Pricing for Interconnection

SWBT provides interconnection at geographically deaveraged prices that are consistent with 47 U.S.C. § 252(d) and this Commission's rules. Consistent with 47 C.F.R. § 51.507(f), these prices reflect the relevant cost difference in each of four defined geographic rate areas in Missouri. See Sparks Aff. ¶¶ 9-13. The prices available in the M2A have been approved by the Missouri PSC or are interim prices either from Texas or based on Missouri-specific TELRIC costs, subject to true-up. Id. ¶¶ 159-172; see also, e.g., M2A Attach. 6 – UNE, App. Pricing.

As previously mentioned, the Missouri PSC adopted the Texas collocation rates on an interim basis, subject to true-up. See Sparks Aff. ¶ 33. Site preparation charges are pro-rated and allocated based on the percentage of the total space used by each CLEC, so that the first CLEC in a premises is not responsible for the entire cost of site preparation. Id. ¶¶ 51, 55.

As this Commission has made clear, "the mere presence of interim rates will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set." Texas Order, 15 FCC Rcd at 18394, ¶ 88 (approving SWBT's Texas application

despite interim rates for interconnection); see also Kansas/Oklahoma Order ¶ 239 (approving interim collocation rates imported from Texas). The interim solution here is reasonable because all of the interim rates for interconnection, including collocation, are cost-based, the Missouri PSC is currently engaged in setting permanent rates, and the interim rates are subject to true-up. See Kansas/Oklahoma Order ¶ 240; Hughes Aff. ¶ 29 (describing fact that parties have reached agreement on all collocation terms and conditions except for price and have proposed a procedural schedule allowing for expedited resolution of this issue).

B. Checklist Item 2: Access to Network Elements

SWBT satisfies Checklist Item 2 by providing "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3); see id. §§ 271(c)(2)(B)(ii), 252(d)(1). This offer of leased access to individual components of SWBT's local exchange network enables CLECs to serve their local customers without duplicating SWBT's multi-billion dollar investment in local network infrastructure.

1. Access to UNEs Generally

SWBT is in full compliance with this Commission's UNE Remand Order.[24] The M2A reflects all the new requirements in the UNE Remand Order that became effective on February 17, 2000, and May 18, 2000.[25] The M2A offers CLECs access to dark fiber, subloop unbundling, local switching, tandem switching, signaling networks, call-related databases, line

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[24] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999). See Sparks Aff. ¶¶ 74-75; Deere Aff. ¶ 63; M2A Attach. 6 – UNE; Texas Order, 15 FCC Rcd at 18367-68, ¶ 28; New York Order, 15 FCC Rcd at 3967, ¶ 31, 4021-22, ¶ 140 n.420.

[25] See Sparks Aff. ¶¶ 75-82; Texas Order, 15 FCC Rcd at 18368, ¶ 29; New York Order, 15 FCC Rcd at 3967, ¶ 31, 4021-22, ¶ 140 n.420.

conditioning, and information on loop qualification. See Final Missouri PSC Order at 28; Sparks Aff. ¶¶ 83-87. The M2A additionally provides CLECs a means to obtain any additional UNEs required by this Commission or identified through arbitration. Id. ¶ 82; M2A Attach. 6 – UNE, § 14.5.

2. UNE Combinations

SWBT makes available UNE combinations beyond what is required by the 1996 Act. SWBT has proven that when requested to do so, it will combine particular network elements that are not already combined, including new loop to switch port combinations (the "UNE Platform" or "UNE-P") and, under certain conditions, loop to interoffice transport combinations (the "Enhanced Extended Loop" or "EEL"). Sparks Aff. ¶¶ 112, 108-110; see also SBC/Ameritech Merger Order,[26] 14 FCC Rcd at 14875, ¶ 393 (provision of UNE Platform for service to residential customers). SWBT will combine UNEs for CLECs at recurring rates set by the Missouri PSC pursuant to 47 U.S.C. § 252(d). See Sparks Aff. ¶¶ 108-112. SWBT has shown that it has developed methods and procedures for new combinations of specific UNEs. See id. ¶¶ 108-109; M2A Attach. 6 – UNE, § 14.7.

Under the M2A, SWBT will combine unbundled 2- or 4-wire analog or 2-wire digital loops with unbundled voice-grade DS0, DS1, or DS3 dedicated transport to provide new EEL arrangements. See Sparks Aff. ¶¶ 116-119; M2A Attach. 6 – UNE, § 14.7. These terms and conditions associated with SWBT's agreement to assemble new EEL combinations are more generous than the terms required under the UNE Remand Order, which addressed "existing

[26] Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999), vacated on other grounds sub nom. Association of Communications Enters. v. FCC, 235 F.3d 662 (D.C. Cir. 2001).

combinations of loop and transport between the end user and the incumbent LEC's serving wire center" (15 FCC Rcd at 3912, ¶ 486 (emphasis added)); opened a further proceeding regarding transport links to interexchange carrier ("IXC") points of presence; and permitted incumbent LECs to restrict use of converted special access facilities for access bypass. See id. at 3909, ¶ 480, 3912-13, ¶¶ 486-489, 3914-15, ¶¶ 494-496.[27] SWBT's M2A EEL offerings are the same as those in the Kansas 271 Agreement ("K2A"), Oklahoma 271 Agreement ("O2A"), and T2A, an arrangement that this Commission has already found acceptable. See Texas Order, 15 FCC Rcd at 18468, ¶ 224; Sparks Aff. ¶ 119.

SWBT does not separate UNEs that it currently combines in its network unless a CLEC requests that it do so. Final Missouri PSC Order at 29; Sparks Aff. ¶ 106. Moreover, SWBT has made its combinations – including new UNE combinations that are not now required by Commission rules – available to all CLECs in Missouri on a legally binding basis through the M2A and arbitrated interconnection agreements. See Sparks Aff. ¶¶ 106-108, 111-112; M2A Attach. 6 – UNE, §§ 14.2, 14.3, 14.4, 14.7.

SWBT does not charge a Central Office Access Charge ("COAC") when a CLEC orders UNEs that are already combined. Final Missouri PSC Order at 29; Sparks Aff. ¶¶ 165-166; M2A Attach. 6 – UNE, § 14.2. For combinations of UNEs that do not already exist in SWBT's network and that require new work to assemble, and thus are outside the pricing requirements of sections 251 and 252, SWBT charges the COAC in addition to other applicable UNE charges. Final Missouri PSC Order at 29; Sparks Aff. ¶ 165.

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[27] See Supplemental Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 1760 (1999); see also New York Order, 15 FCC Rcd at 4079-80, ¶ 235.

SWBT makes certain collocation arrangements – including caged, shared-caged, cageless, and virtual collocation – available to CLECs for interconnection and access to UNEs. Final Missouri PSC Order at 29-30; Sparks Aff. ¶¶ 33, 47-73; M2A Attach. 13 – Ancillary Functions; see Kansas/Oklahoma Order ¶ 173. SWBT permits CLECs to collocate their equipment in adjacent controlled environmental vaults or similar structures where space for physical collocation is not available, and SWBT does so under the same nondiscriminatory terms as traditional physical collocation. See Sparks Aff. ¶ 56. In addition, SWBT makes available to CLECs access to secured frame rooms or cabinets (where space is not available for a room) that are set aside for accomplishing the necessary connections. Final Missouri PSC Order at 29-30; Sparks Aff. ¶¶ 120-122.

CLECs are not required to own or operate any equipment of their own to combine SWBT's UNEs. Sparks Aff. ¶ 122. The various collocation options, the secured frame option, and SWBT's offer to combine certain UNEs for CLECs provide multiple methods for CLECs to obtain UNEs without owning or controlling any other local exchange facilities. Facilities-based CLECs can use these same methods to combine SWBT's network elements with their own facilities. In addition, CLECs are not restricted to these methods of combining UNEs, but may request other technically feasible methods of access that are consistent with the provisions of the 1996 Act and other governing statutes and decisions. See M2A Attach. 6 – UNE, § 2.22; Kansas/Oklahoma Order ¶ 173.

3. Line Sharing

SWBT is also in compliance with this Commission's Line Sharing Order.[28] See also Part II.D.1.b, infra. Indeed, as a result of its "significant development and operational resources

[28] See Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC

devoted to planning for competing carrier access to the high frequency portion of the loop," Texas Order, 15 FCC Rcd at 18514, ¶ 322, SWBT was in full compliance with the Line Sharing Order in advance of the Commission's implementation date, Chapman Aff. ¶ 73 (App. A, Tab 4). Moreover, SWBT exceeds the Commission's requirements by providing the splitter for a CLEC in conjunction with line sharing at the CLEC's request. See id. ¶ 77. SWBT makes line sharing available to CLECs serving customers in Missouri in an optional amendment to the M2A that fully complies with the Line Sharing Order. See Sparks Aff. ¶¶ 102-105. In addition, CLECs may obtain terms and conditions for digital subscriber line ("xDSL")-capable loops and line sharing from SBC's 13-state generic interconnection agreement. Final Missouri PSC Order at 31; Sparks Aff. ¶ 105.

4. Intellectual Property

As in Kansas and Oklahoma, SWBT offers the same terms and conditions to CLECs in Missouri that this Commission approved without reservation in the Texas Order. See 15 FCC Rcd at 18470-71, ¶ 230 ("[T]he T2A provides that the terms of the Intellectual Property Order control over language in the T2A that AT&T asserts is discriminatory. We therefore find that SWBT does not insist on language in its interconnection agreements that violates its obligation to provide nondiscriminatory access to UNEs under section 251(c)(3) or 252(d)(1) of the Act, as AT&T argues.") (footnote omitted). SWBT has modified the M2A to include a commitment to use its best efforts to obtain for CLECs, under commercially reasonable terms, intellectual property rights to each unbundled network element necessary for CLECs to use such unbundled

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Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 20912, 20982-83, ¶ 161 (1999); Sparks Aff. ¶¶ 104-106.

elements in the same manner as SWBT. See Final Missouri PSC Order at 31-32; M2A General Terms and Conditions §§ 7.3.2-7.3.7; Sparks Aff. ¶ 123.

5. Pricing

SWBT provides UNEs in Missouri in compliance with all Commission and statutory requirements. SWBT has developed rates that comply with the TELRIC methodology as previously articulated by this Commission. See Sparks Aff. ¶¶ 160, 182. Accordingly, SWBT provides CLECs even lower rates than they would be eligible to receive under the 1996 Act, as interpreted by the Eighth Circuit. See Iowa Utils. Bd. v. FCC, 219 F.3d 744, 749-51 (8th Cir. 2000).

The UNE prices contained in the M2A are derived from three sources: (1) the prices for the bulk of UNEs that are actually being ordered by CLECs throughout Southwestern Bell's region are permanent and derived from the rates established originally by the Missouri PSC as part of the first arbitration proceeding between SWBT and AT&T (Case No. TO-97-40) that concluded in the First Arbitration Order[29] on July 31, 1997; (2) a number of additional UNE prices in the M2A are interim and based on the rates established in the second arbitration proceeding between SWBT and AT&T (Case No. TO-98-115) that concluded in the Second Arbitration Order[30] on December 23, 1997; and (3) finally, prices for those UNEs that have not

[29] Final Arbitration Order, AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-97-40 (MPSC July 31, 1997) (App. G, Tab 11).

[30] Report and Order, AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-98-115 (MPSC Dec. 23, 1997) (App. G, Tab 20).

yet been reviewed by the Missouri PSC have been set at the rates contained in the T2A, subject to true-up when the Missouri PSC sets permanent rates for those UNEs.[31]

a. UNE Rates from the First and Second Arbitration Orders[32]

The M2A offers the monthly recurring and nonrecurring charges that were established by the Missouri PSC in the First Arbitration Order with a 25-percent reduction in the nonrecurring charges (so long as those charges do not fall below the level established in the T2A). This 25-percent discount is similar to the voluntary reduction in nonrecurring charges that SWBT offered as part of its application for section 271 relief in Kansas. See Kansas/Oklahoma Order ¶ 56; Staff Report[33] at 5. The UNE rates contained in the M2A are, therefore, either equal to or lower than the corresponding rates established by the Missouri PSC in the First Arbitration Order. The Missouri Staff has concluded that these rates are "in conformance with the modifications suggested by the [Missouri PSC] in its February 13th interim order" and "that UNE prices

[31] There is one exception: the UNE rates for loop conditioning do not actually fall into any of these three categories. The loop-conditioning rates had been previously established by the Missouri PSC in connection with three separate arbitrations concerning the provision of xDSL services, see Hughes Aff. ¶ 12. Rather than accept the loop-conditioning rates that it had already established in these prior proceedings, the Missouri PSC ordered Southwestern Bell to include the loop conditioning rates from the T2A on an interim basis, subject to true up, and has opened Case No. TO-2001-439 to establish new rates for loop conditioning. Id. ¶ 30.

[32] Notwithstanding the fact that the Eighth Circuit has struck down these two arbitration orders, see Southwestern Bell Tel. Co. v. Missouri Pub. Serv. Comm'n, 236 F.3d 922 (8th Cir. 2001), stay granted, No. 99-3833 (8th Cir. Feb. 7, 2001) (pending the Supreme Court's decision in Verizon Communications Inc. v. FCC, No. 00-511 (U.S.) (oral argument to be scheduled)), SWBT has committed in the M2A to follow the Missouri PSC's pricing decisions in those arbitrations for the duration of the M2A, subject to the Supreme Court's review of the Commission's TELRIC rules. See M2A General Terms and Conditions § 18.2.

[33] Staff Report on Compliance with Commission Interim Order Regarding The Missouri Interconnection Agreement, Application of Southwestern Bell Telephone Co. to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri, Case No. TO-99-227 (MPSC Feb. 23, 2001) (App. C, Tab 93).

established in Case No. TO-97-40 constitute the bulk of UNEs ordered by competitors in Missouri." Staff Report at 5.

The M2A also offers, on an interim basis subject to true-up, all of the prices for UNEs and services that were ordered by the Missouri PSC in the Second Arbitration Order as part of Case No. TO-98-115. The Missouri PSC already has pending a proceeding – Case No. TO-2001-438 – in which it will establish permanent prices for these UNEs. These rates, like those from the First Arbitration Order, have also had their nonrecurring charges reduced by up to 25 percent (subject to the T2A "floor").

The rates established in the First Arbitration Order and in the Second Arbitration Order were the result of a detailed and comprehensive review by the Missouri PSC. After AT&T filed for arbitration in July 1996, the Missouri PSC invited the filing of written testimony and held formal hearings including cross-examination between October 8 and October 17, 1996. In December 1996, the Missouri PSC entered an order setting interim rates.[34] The federal district court that reviewed these arbitration proceedings explicitly recognized that "the PSC entered an order setting interim rates using the TELRIC methodology." AT&T Communications of the Southwest, Inc. v. Southwestern Bell Tel. Co., 86 F. Supp. 2d 932, 941 (W.D. Mo. 1999) (emphasis added), rev'd and vacated on other grounds sub nom. Southwestern Bell Tel. Co. v. Missouri Pub. Serv. Comm'n, 236 F.3d 922 (8th Cir. 2001). Indeed, SWBT moved for rehearing on the grounds that the PSC should not have used TELRIC because the Eighth Circuit had stayed those regulations, but the Missouri PSC denied the motion.

[34] See Arbitration Order, AT&T Communication of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Co., Case No. TO-97-40 (MPSC Dec. 11, 1996) (App. G, Tab 9).

In its effort to set permanent rates, the Missouri PSC ordered its Staff to undertake an extensive investigation of SWBT's prices, meeting two or three days each week for four months with SWBT personnel in SWBT's offices to ensure that software, data, and subject matter experts responsible for each critical input value would be readily available. See B. Smith Aff. ¶¶ 9-15 (App. A, Tab 10). The Missouri Staff also met extensively with AT&T's personnel, gathering similar information. See AT&T Communications, 86 F. Supp. 2d at 941 (describing the Missouri Staff's investigative procedure).

The Missouri Staff found that SWBT's cost studies fully complied with TELRIC principles. First Arbitration Order Attach. C – Costing and Pricing Report at 3 ("SWBT's TELRIC cost studies with modifications are Missouri specific and more closely calculate the forward-looking economic costs incurred in SWBT territory."); see B. Smith Aff. ¶¶ 17-38. In accordance with sections 251(c)(3) and 252(d)(1) of the Act and this Commission's TELRIC principles, SWBT's cost studies identified the entire quantity of the network elements provided. Only forward-looking, incremental costs were included. See B. Smith Aff. ¶¶ 17, 25-26. SWBT's studies calculated nonrecurring costs by identifying the work groups involved and the time required to complete each activity, identifying the labor costs for the personnel typically performing them, and by multiplying the time required to perform these activities by the labor costs adjusted to represent the planning period of the cost study. Id. ¶ 31.

In July 1997, the Missouri PSC issued its Final Arbitration Order adopting permanent rates. In doing so, the Missouri PSC attached a lengthy Costing and Pricing Report issued by the Staff and explained that it had based its ultimate pricing decisions only on the information contained in the Report: "The [Report] consumes several hundred pages and constitutes a thorough and exhaustive review of each and every cost factor which the Commission finds

relevant to this arbitration." First Arbitration Order at 3; see id. Attach. C. The Missouri Staff explained in its Costing and Pricing Report the basis for the rates that were ultimately adopted by the Missouri PSC:

> Staff believes the most appropriate cost standard is the use of forward-looking economic costs assuming the existing network were being rebuilt today to meet forward-looking levels of demand. The approach includes the use of the latest technology currently deployed in the existing network. This approach also recognizes the use of existing rights-of-way and physical constraints that dictate how and where the network must be placed. Staff believes this costing standard will most closely resemble the costs that an efficient competitor would face if entering the market today. Finally, by recognizing forward-looking demand, this approach focuses the network design and cost recovery on the users of the network. Staff believes this more appropriately allocates the network costs to the cost-causer.

Id. Attach. C at 3. Notwithstanding the fact that the Missouri PSC agreed that SWBT's cost studies in Case No. TO-97-40 fully complied with TELRIC, see Final Missouri PSC Order at 33, the Staff (and, ultimately, the Missouri PSC itself) discounted by 50 percent the nonrecurring TELRIC-based costs submitted by SWBT. Id. Attach. C at 120-24; see B. Smith Aff. ¶ 31. The district court, in reviewing SWBT's challenge to this order, concluded that "[t]he staff considered only competing TELRIC models, even though SWBT had argued that historical costs should be used to set rates. In the [First Arbitration Order], the PSC adopted its staff's recommendations." AT&T Communications, 86 F. Supp. 2d at 942; see Final Missouri PSC Order at 32-33.

In September 1997, AT&T filed a second petition for compulsory arbitration, alleging that certain issues about the pricing of additional UNEs remained unresolved. In October 1997, both AT&T and SWBT submitted a joint list of 160 unresolved issues, and the Missouri PSC ordered the parties to submit to mediation before a Special Master. The Special Master and the Missouri Staff conducted a lengthy mediation, after which the parties filed a Settlement Document identifying issues that had been resolved and issues that remained. The Special

Master recommended a resolution for each of the remaining issues, and the Missouri PSC, in December 1997, issued a Report and Order largely accepting the Special Master's recommendations and setting rates on an interim basis. See Second Arbitration Order at 23-34.

There can be no dispute that the Missouri PSC established permanent rates in its First Arbitration Order and interim rates in its Second Arbitration Order in full compliance with this Commission's TELRIC rules. The district court explicitly found that "[t]he PSC did apply TELRIC methodology when making its pricing decisions," AT&T Communications, 86 F. Supp. 2d at 949 n.7; AT&T argued not only that the PSC applied TELRIC but that its application of TELRIC was fully justified. Id. at 949. On appeal, the Eighth Circuit reversed and remanded the case back to the Missouri PSC precisely because TELRIC had been applied and because the court had concluded six months earlier that TELRIC was inconsistent with the 1996 Act. See Southwestern Bell, 236 F.3d at 924 ("The PSC's pricing decision that is challenged here was made by reference to the FCC's chosen method of cost-based pricing. . . . We therefore conclude that the holding in [Iowa Utils. Bd., 219 F.3d 744] invalidating the TELRIC pricing methodology requires that the entire arbitrated agreement approved by the PSC in this case be vacated and that further proceedings . . . be held.) (emphasis added).

No party has challenged either the First Arbitration Order or the Second Arbitration Order (or, indeed, any subsequent order adopting rates first established in those orders) on the grounds that the Missouri PSC failed to apply TELRIC or improperly considered SWBT's historical costs in setting rates. And it is worth noting, of course, that the actual rates contained in the M2A that were derived from either arbitration order are equal to or lower than the rates that have universally been recognized as complying with this Commission's TELRIC methodology. For these reasons, it is entirely appropriate for the M2A to incorporate rates

derived from the two arbitration orders; such rates, which are equal to or lower than the rates found to be TELRIC-based by two federal courts, are clearly cost based within the meaning of sections 252(d)(1) and 271(c)(2)(B)(ii).

b. The Remaining "95 UNE" Rates

The Missouri PSC found in its Interim Order that the M2A contained "prices for 95 unbundled network elements identified by Staff that have not been reviewed by the [Missouri PSC] for conformance with the FCC's standards." Interim Order at 5. Relying on the fact that this Commission had already approved interim prices in Texas for these "95 UNEs"[35] – as well as on the fact that "CLECs and SWBT have been operating under the Texas agreement for a substantial period of time using those prices," Interim Order at 6 – the Missouri PSC concluded that SWBT should offer the prices for these UNEs as contained in the T2A, subject to true-up with permanent rates. SWBT agreed to offer these interim rates and revised the M2A accordingly. The Missouri Staff concluded that "SWBT has complied with the [Missouri PSC's] interim order by implementing T2A prices for these services/elements." Staff Report at 6.

As this Commission has stated on numerous occasions, "interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set." Texas Order, 15 FCC Rcd at 18475, ¶ 236; see also Kansas/Oklahoma Order ¶ 238; New York Order, 15 FCC Rcd at 14090-91, ¶ 258. Having already approved these interim rates in the Texas Order, this Commission has clearly concluded that they are

[35] The true number of UNEs that falls into this category is 74, not 95. See M2A Attach. 6 – UNE.

"reasonable under the circumstances." 15 FCC Rcd at 18475, ¶ 236. Moreover, as discussed above, the Missouri PSC has more than adequately demonstrated its commitment to this Commission's TELRIC rules. And the rates are subject to true-up in light of the permanent rates that will be established in Case No. TO-2001-438 or otherwise. See Final Missouri PSC Order at 37 (concluding that "true-up period that is six months retrospectively from the date of the Commission's order establishing a permanent rate is appropriate"). Therefore, the T2A rates for the "95 UNEs" that the Missouri PSC has not yet reviewed clearly satisfy this Commission's standard for relying on interim rates.

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This Commission has made clear that it does not review rates de novo in a section 271 proceeding. See Kansas/Oklahoma Order ¶ 59; New York Order, 15 FCC Rcd at 4084, ¶ 244; see also AT&T Corp. v. FCC, 220 F.3d 607, 615 (D.C. Cir. 2000) (noting that "[t]he FCC does not conduct de novo review of state pricing determinations in section 271 proceedings, nor does it adjust rates to conform with TELRIC"). Rather, the Commission's role is to determine only whether the state's rates comply with basic TELRIC principles:

> In reviewing state pricing decisions in the context of section 271 applications, we will not reject an application because isolated factual findings by a commission might be different from what we might have found if we were arbitrating the matter under section 252(e)(5). Rather, we will reject the application only if basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.

New York Order, 15 FCC Rcd at 4084, ¶ 244; see also Kansas/Oklahoma Order ¶ 59.

Admittedly, some of the UNE rates in Missouri are higher than the rates in Texas, but that is hardly surprising. Not only are there significant cost differences that can account for differences in rates, see B. Smith Aff. ¶¶ 41-44, but, as the D.C. Circuit explained, "TELRIC is

not a specific formula, but a framework of principles that govern pricing determinations." AT&T Corp., 220 F.3d at 615. "[W]hile TELRIC consists of 'methodological principles' for setting prices, states retain flexibility to consider 'local technological, environmental, regulatory, and economic conditions.'" New York Order, 15 FCC Rcd at 4084, ¶ 244 (quoting Local Competition Order,[36] 11 FCC Rcd at 15559, ¶ 114). This Commission will not ordinarily conduct a state-to-state comparison of rates because it has recognized that rates will "vary[] . . . from one state to the next."[37] And the D.C. Circuit acknowledged that, "while state commissions use TELRIC to establish rates, application of TELRIC principles may result in different rates in different states." AT&T Corp., 220 F.3d at 615.

TELRIC is a methodology, not a result. The variation among the rates in Missouri and Texas is not only reasonable, but it is to be expected under the pricing regime enacted by Congress in the 1996 Act and by the Commission's pricing methodology. The Commission itself recognized variation from state-to-state in its Local Competition Order when it established default proxies for particular network elements. 11 FCC Rcd at 15894, ¶ 792; 47 C.F.R. § 51.513(c).

Moreover, conducting a state-to-state comparison would unnecessarily complicate the Commission's review and fail to give the appropriate deference to state commission decisions. State commissions are not required to set their rates with an eye toward the rates in other states. The Missouri PSC was not obligated to begin its ratemaking with the Texas prices as a

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[36] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366 (1999), decision on remand, Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2000), petitions for cert. granted sub nom. Verizon Communications Inc. v. FCC, 121 S. Ct. 877 (2001).

[37] Michigan Order, 12 FCC Rcd at 20699, ¶ 291.

benchmark. There is, therefore, no legal basis for this Commission to start from that presumption. Indeed, such a presumption would conflict with the judicial conclusion that the Commission has no authority – nor has it ever claimed to have such authority – to set rates on its own:

> [T]he FCC "has jurisdiction to design a pricing methodology." [525 U.S. at 385.] However, the FCC does not have jurisdiction to set the actual prices for the state commissions to use. Setting specific prices goes beyond the FCC's authority to design a pricing methodology and intrudes on the states' right to set the actual rates pursuant to § 252(c)(2). Following the Supreme Court's opinion, we now agree with the FCC that its role is to resolve "general methodological issues," and it is the state commission's role to exercise its discretion in establishing rates.

Iowa Utils. Bd., 219 F.3d at 757 (quoting Commission's Supreme Court Brief). Thus, the Commission's role in this proceeding is to review the Missouri PSC's "general methodologies," not to pass judgment on or second-guess the rates approved for use by the state commissions.

And nothing in the Commission's recent Kansas/Oklahoma Order changes this analysis. While it is true that, in the most recent section 271 order, the Commission undertook a comparison of Oklahoma and Texas loop rates, it did so only after it had first concluded that the Oklahoma Corporation Commission had violated TELRIC by using the current fill factor for distribution cable rather than considering a forward-looking fill factor or assuming that the fill factor would increase over time. Kansas/Oklahoma Order ¶ 80. Although it may be appropriate to compare rates from one state to another when considering whether a mistake in applying TELRIC resulted in rates "outside the range that the reasonable application of TELRIC principles would produce," id. ¶ 81 (internal quotation marks omitted), there is no support in the Kansas/Oklahoma Order for the proposition that such comparisons are to be undertaken in the absence of a finding that the state commission somehow failed to establish cost-based rates. Id. ¶ 82 (state-to-state comparison valid only "in appropriate circumstances").